

# EXHIBIT 2

ERIK R. SIRRI-1/13/12

<p style="text-align: center;">1</p> <p style="text-align: center;">VOLUME: 1 PAGES: 1 - 209 EXHIBITS: SEE INDEX IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF MASSACHUSETTS</p> <p style="text-align: center;">CIVIL ACTION NO: 06-10885-NMG</p> <p style="text-align: center;">*****</p> <p>SECURITIES AND EXCHANGE COMMISSION, Plaintiff, vs. JAMES TAMBONE and ROBERT HUSSEY, Defendants. *****</p> <p>DEPOSITION OF ERIK R. SIRRI, a witness called on behalf of the Plaintiff, taken pursuant to provisions of the Federal Rules of Civil Procedure, before Marsha S. Gerber, RPR, CSR No. 111793, and Notary Public in and for the Commonwealth of Massachusetts, at the offices of United States Securities and Exchange Commission, 33 Arch Street, Suite 2300, Boston, Massachusetts, on Friday, January 13, 2012, commencing at 9:57 a.m.</p> <p style="text-align: center;">KACZYNSKI REPORTING 72 CHANDLER STREET BOSTON, MASSACHUSETTS 02116</p>	<p style="text-align: right;">3</p> <p style="text-align: center;">I N D E X</p> <table border="0"> <tr> <td style="vertical-align: top;">1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24</td><td style="vertical-align: top;"> <p>WITNESS                      EXAMINATION</p> <p>ERIK R. SIRRI</p> <p>By Mr. London                      5</p> </td></tr> </table> <table border="0"> <tr> <td style="vertical-align: top;">1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24</td><td style="vertical-align: top;"> <p style="text-align: center;">E X H I B I T S</p> <table border="0"> <tr> <td style="text-align: left;">NUMBER</td><td style="text-align: left;">PAGE</td></tr> <tr> <td>600</td><td>Copy of Expert Report of Professor Erik R. Sirri</td></tr> <tr> <td></td><td>95</td></tr> </table> </td></tr> </table> <p style="text-align: center;">Exhibit retained by Attorney London</p>	1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24	<p>WITNESS                      EXAMINATION</p> <p>ERIK R. SIRRI</p> <p>By Mr. London                      5</p>	1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24	<p style="text-align: center;">E X H I B I T S</p> <table border="0"> <tr> <td style="text-align: left;">NUMBER</td><td style="text-align: left;">PAGE</td></tr> <tr> <td>600</td><td>Copy of Expert Report of Professor Erik R. Sirri</td></tr> <tr> <td></td><td>95</td></tr> </table>	NUMBER	PAGE	600	Copy of Expert Report of Professor Erik R. Sirri		95
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<p style="text-align: center;">2</p> <p>1 APPEARANCES:</p> <p>2 DAVID H. LONDON, ESQUIRE</p> <p>3 PATRICIA GRANT, LAW STUDENT</p> <p>4 UNITED STATES SECURITIES AND</p> <p>5 EXCHANGE COMMISSION</p> <p>6 BOSTON DISTRICT OFFICE</p> <p>7 33 Arch Street, Suite 2300</p> <p>8 Boston, Massachusetts 02110-1424</p> <p>9 617-573-8997</p> <p>10 For the Plaintiff</p> <p>11 ERIC M. GOLD, ESQUIRE</p> <p>12 GREENBERG TRAURIG, LLP</p> <p>13 One International Place</p> <p>14 Boston, Massachusetts 02110</p> <p>15 617-310-5226</p> <p>16 For the Defendant James Tambone</p> <p>17 ERIN E. HAYES, ESQUIRE</p> <p>18 SKADDEN, ARPS, SLATE, MEAGHER &amp; FLOM, LLP</p> <p>19 One Beacon Street</p> <p>20 Boston, Massachusetts 02108</p> <p>21 617-573-4843</p> <p>22 For the Defendant Robert Hussey</p> <p>23 ALSO PRESENT:</p> <p>24 MICHAEL LOIURIO, VIDEOGRAPHER</p> <p>NATIONAL VIDEO REPORTERS, INC.</p> <p>7 Cedar Drive</p> <p>Woburn, MA 01801</p> <p>781-937-9900</p>	<p style="text-align: right;">4</p> <p style="text-align: center;">P R O C E E D I N G S</p> <p style="text-align: center;">THE VIDEOGRAPHER: We are</p> <p>now recording and on the record. My</p> <p>name is Michael Loiurio. I'm a legal</p> <p>video specialist for National Video</p> <p>Reporters, Inc. In association with</p> <p>Kaczynski Reporting. Today's date is</p> <p>January 13th, 2012, and the time is</p> <p>9:57 a.m.</p> <p style="text-align: center;">This is the deposition of</p> <p>Erik Sirri in the matter of Securities</p> <p>and Exchange Commission versus James</p> <p>Tambone and Robert Hussey in the U.S.</p> <p>District Court, District of</p> <p>Massachusetts, 06-10885 NMG. This</p> <p>deposition is being taken at 33 Arch</p> <p>Street on behalf of the plaintiff. The</p> <p>court reporter is Marsha Gerber of</p> <p>Kaczynski Reporting. The counsel will</p> <p>state their appearances, and the court</p> <p>report will administer the oath.</p> <p style="text-align: center;">MR. LONDON: David London</p> <p>for plaintiff, Securities and Exchange</p>										

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<p style="text-align: right;">5</p> <p>1 Commission. And sitting with me today</p> <p>2 is a law student, Patricia Grant.</p> <p>3 MR. GOLD: Eric Gold for</p> <p>4 defendant Jim Tambone.</p> <p>5 MS. HAYES: Erin Hayes for</p> <p>6 defendant Robert Hussey.</p> <p>7</p> <p>8 ERIK R. SIRRI,</p> <p>9 having been satisfactorily identified and</p> <p>10 sworn by the Notary Public, was examined</p> <p>11 and testified as follows:</p> <p>12 BY MR. LONDON:</p> <p>13 Q Good morning, Professor.</p> <p>14 A Good morning.</p> <p>15 Q For the record, would you just state</p> <p>16 your name.</p> <p>17 A Erik Sirri.</p> <p>18 Q You have a middle initial; correct?</p> <p>19 A Eric R. Sirri.</p> <p>20 Q Thank you.</p> <p>21 What is your home address?</p> <p>22 A 100 Nason Hill Road. Nason is N, like</p> <p>23 Nancy, A-S-O-N Hill Road in Sherborn,</p> <p>24 S-H-E-R-B, like boy, O-R-N,</p>	<p style="text-align: right;">7</p> <p>1 Q And during the periods where you've</p> <p>2 been a professor at Babson, what</p> <p>3 courses have you taught?</p> <p>4 A I've taught a variety of courses. One</p> <p>5 has been the course called Capital</p> <p>6 Markets. Another is a course Fixed</p> <p>7 Income. Another is a course Equity</p> <p>8 Markets. A fourth is a course Risk</p> <p>9 Management. A fifth is a course</p> <p>10 Marketing of Financial Services. A</p> <p>11 sixth is a course Personal Financial</p> <p>12 Management.</p> <p>13 Q Out of the list of courses you've</p> <p>14 identified do any of the courses or do</p> <p>15 more than one of the courses involve</p> <p>16 teaching about the mutual fund</p> <p>17 industry?</p> <p>18 A Yes.</p> <p>19 Q Can you identify which of those courses</p> <p>20 involve the mutual fund industry?</p> <p>21 A Capital Markets, Personal Financial</p> <p>22 Management, Marketing of Financial</p> <p>23 Services.</p> <p>24 What were the other ones I</p>
<p style="text-align: right;">6</p> <p>1 Massachusetts.</p> <p>2 Q What is your current employment?</p> <p>3 A I'm a professor at Babson College.</p> <p>4 Q And how long have you been teaching at</p> <p>5 Babson?</p> <p>6 A I began teaching in 1995.</p> <p>7 Q And you taught for a period, and then</p> <p>8 there was a break, and you came back;</p> <p>9 is that correct?</p> <p>10 A That's correct.</p> <p>11 Q So if you could just describe for the</p> <p>12 record the periods of time you actually</p> <p>13 taught at Babson?</p> <p>14 A I taught from 1995 to 1996. I left in</p> <p>15 1996 to join the Securities and</p> <p>16 Exchange Commission. I came back in</p> <p>17 1999, and I began teaching again in</p> <p>18 1999. I worked at the Securities -- I</p> <p>19 worked at Babson College until 2006.</p> <p>20 Then again I went to the</p> <p>21 Securities and Exchange Commission from</p> <p>22 2006 to 2009. I came back in 2009.</p> <p>23 And I've been teaching at Babson</p> <p>24 College since then.</p>	<p style="text-align: right;">8</p> <p>1 told you about?</p> <p>2 Q To help you out, Fixed Income, Equity</p> <p>3 Markets, and Risk Management.</p> <p>4 A Not Fixed Income. Equity Markets may</p> <p>5 have. And not Risk Management.</p> <p>6 Q Can you describe for me at least</p> <p>7 generally speaking what you teach about</p> <p>8 the mutual fund industry in those</p> <p>9 courses to the extent you can?</p> <p>10 A Sure. With the course Capital Markets</p> <p>11 I teach about, first, two things.</p> <p>12 First is that the general structure of</p> <p>13 mutual funds. The fact that funds are</p> <p>14 generally organized as a trust, that</p> <p>15 they have no employees, and their</p> <p>16 general structure. That is, the</p> <p>17 outsource nature of management and</p> <p>18 service providers.</p> <p>19 The second thing I teach is</p> <p>20 about the pricing of money market</p> <p>21 funds. I teach a case on the problems</p> <p>22 associated with pricing money market</p> <p>23 funds at a one dollar NAV through the</p> <p>24 credit crisis and the problems that</p>

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<p style="text-align: right;">9</p> <p>1 arose with money funds maintaining</p> <p>2 their dollar NAV while the value of</p> <p>3 portfolio securities was falling.</p> <p>4 In the course Personal</p> <p>5 Financial Management the topic came up</p> <p>6 because there I take the perspective of</p> <p>7 an investor, a person who would use</p> <p>8 mutual funds, and I spend a</p> <p>9 considerable amount of time talking,</p> <p>10 again, about their structure, about</p> <p>11 their pricing, about efficiencies</p> <p>12 associated with mutual funds open end</p> <p>13 versus mutual funds closed end versus</p> <p>14 ETFs. And I spend time talking about</p> <p>15 passive management styles within mutual</p> <p>16 funds versus active management styles</p> <p>17 within mutual funds and the benefits</p> <p>18 that mutual funds convey to retail</p> <p>19 investors which have on the order of,</p> <p>20 say, \$50,000 to invest.</p> <p>21 The last course I think I</p> <p>22 mentioned was Marketing of Financial</p> <p>23 Services. That's a course I taught</p> <p>24 that dealt with the problem of how you</p>	<p style="text-align: right;">11</p> <p>1 invest in mutual funds and so being a</p> <p>2 finance professor you can't help but</p> <p>3 learn some things from investing.</p> <p>4 <b>Q That sort of leads into my next</b></p> <p>5 <b>question. The other, one of the other</b></p> <p>6 <b>topics you identify, is the investor</b></p> <p>7 <b>perspective.</b></p> <p>8 <b>A Yes.</b></p> <p>9 <b>Q Where did you develop the understanding</b></p> <p>10 <b>in order to go ahead and teach about</b></p> <p>11 <b>the mutual fund industry from the</b></p> <p>12 <b>investor perspective?</b></p> <p>13 <b>A That came from my own experience as an</b></p> <p>14 <b>investor. It came from research I had</b></p> <p>15 <b>done in mutual funds. It came from my</b></p> <p>16 <b>experience as a trustee on the board of</b></p> <p>17 <b>a mutual fund. It came from consulting</b></p> <p>18 <b>work. It came from conversations I had</b></p> <p>19 <b>with investment professionals. It came</b></p> <p>20 <b>from conversation I had with investment</b></p> <p>21 <b>advisors and brokers. And it came from</b></p> <p>22 <b>my experience in the Securities and</b></p> <p>23 <b>Exchange Commission.</b></p> <p>24 <b>Q Based on how you describe your</b></p>
<p style="text-align: right;">10</p> <p>1 sell a financial product, in this case</p> <p>2 a mutual fund, into the marketplace.</p> <p>3 How you position the product. How</p> <p>4 people buy the product. What is the</p> <p>5 salient attributes of the product. And</p> <p>6 so I talk about positioning and the</p> <p>7 marketing of the mutual funds.</p> <p>8 <b>Q Taking that last point selling mutual</b></p> <p>9 <b>funds into the market, where did you</b></p> <p>10 <b>derive your basis for learning that</b></p> <p>11 <b>concept in order to go ahead and teach</b></p> <p>12 <b>it?</b></p> <p>13 <b>A I think it came from research I had</b></p> <p>14 <b>done in the mutual fund industry. It</b></p> <p>15 <b>came from contact I had with industry</b></p> <p>16 <b>professionals. Living in Boston it's</b></p> <p>17 <b>not hard to -- seems like in my town no</b></p> <p>18 <b>matter where you step you step on</b></p> <p>19 <b>someone who works for a mutual fund</b></p> <p>20 <b>company. I did some consulting work</b></p> <p>21 <b>for mutual funds.</b></p> <p>22 <b>I think those are the main</b></p> <p>23 <b>instances where I got knowledge about</b></p> <p>24 <b>mutual funds. And then of course I</b></p>	<p style="text-align: right;">12</p> <p>1 <b>background now it sounds like you</b></p> <p>2 <b>haven't worked at a mutual fund</b></p> <p>3 <b>company; is that correct?</b></p> <p>4 <b>A That is correct.</b></p> <p>5 <b>Q Have you ever worked in sales in any</b></p> <p>6 <b>manner?</b></p> <p>7 <b>A You mean for a mutual fund company?</b></p> <p>8 <b>Q Any type of sales? Have you ever had a</b></p> <p>9 <b>job where you've been involved in</b></p> <p>10 <b>sales?</b></p> <p>11 <b>A I've had tasks that involved sales, but</b></p> <p>12 <b>I never had a position that labeled me</b></p> <p>13 <b>as a salesman or salesperson.</b></p> <p>14 <b>Q So I'm a little confused.</b></p> <p>15 <b>What do you mean tasks that</b></p> <p>16 <b>involved sales?</b></p> <p>17 <b>A I've helped raise money for my school</b></p> <p>18 <b>with donors. I would call that a sales</b></p> <p>19 <b>job because in the end you're trying to</b></p> <p>20 <b>talk a relatively wealthy person into</b></p> <p>21 <b>buying into the admission of your</b></p> <p>22 <b>school. You're trying to sell your</b></p> <p>23 <b>school and raise money. That had -- I</b></p> <p>24 <b>would say that's a sales position;</b></p>

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<p style="text-align: right;">145</p> <p>1 documents produced by any of the market</p> <p>2 timers identified in the Complaint;</p> <p>3 correct?</p> <p>4 A So the eight -- the entities that are</p> <p>5 named in the Complaint?</p> <p>6 Q Yes.</p> <p>7 A No. Not that I can recall.</p> <p>8 Q Did you think that wouldn't be helpful</p> <p>9 to you to review documents produced by</p> <p>10 the market timers?</p> <p>11 A Well, I would go back to my opinions,</p> <p>12 and I think in coming to the opinions</p> <p>13 that I developed in this matter those</p> <p>14 documents were not -- I didn't feel</p> <p>15 they were necessary in coming to these</p> <p>16 opinions.</p> <p>17 Q Going to the source documents that you</p> <p>18 looked at back in the Exhibit 2. The</p> <p>19 section you call Legal Documents, the</p> <p>20 testimony transcripts?</p> <p>21 A Yes.</p> <p>22 Q And there's a selection of various</p> <p>23 people's testimony transcripts.</p> <p>24 How was it determined whose</p>	<p style="text-align: right;">147</p> <p>1 as illustration for the way I think</p> <p>2 market timing was understood.</p> <p>3 Q So, with respect to the transcripts you</p> <p>4 identify here, did you read the entire</p> <p>5 transcript or did you just look at the</p> <p>6 portion as you describe it that relates</p> <p>7 to discussing the parameters of market</p> <p>8 timing?</p> <p>9 A I did not read the entire transcripts.</p> <p>10 I looked for those sections that dealt</p> <p>11 with what I asked for, and I read</p> <p>12 around them so I could understand the</p> <p>13 context of the comment.</p> <p>14 Q Did you ask the attorney to get you</p> <p>15 documents, for example, e-mail</p> <p>16 documents, not transcript documents,</p> <p>17 e-mail documents where the various</p> <p>18 arrangements were discussed with the</p> <p>19 market timers?</p> <p>20 A I did not ask them for that.</p> <p>21 Q Don't you think that would have been</p> <p>22 helpful to analyze whether or not there</p> <p>23 was market timing?</p> <p>24 MS. HAYES: Objection.</p>
<p style="text-align: right;">146</p> <p>1 testimony was identified here? How was</p> <p>2 that chosen, which transcripts to use?</p> <p>3 A My experience and I believed that the</p> <p>4 term market timing as such was not a</p> <p>5 well understood time, that it was --</p> <p>6 term, that it was ambiguous. That</p> <p>7 people have -- do not have a clear</p> <p>8 understanding of it. That is, at the</p> <p>9 time which the allegations arose, that</p> <p>10 '98 to 2003 time frame, my belief is</p> <p>11 that there wasn't a uniform</p> <p>12 understanding of market timing as it</p> <p>13 relates to mutual funds. And I believe</p> <p>14 today there isn't a uniform</p> <p>15 understanding of what it means when you</p> <p>16 say market timing when it comes to</p> <p>17 mutual funds.</p> <p>18 Because of that, I asked</p> <p>19 people to look for information that</p> <p>20 would support what I believe to be true</p> <p>21 that would document that in the record</p> <p>22 where Columbia professionals or others</p> <p>23 had statements about their view about</p> <p>24 what market timing was, and it served</p>	<p style="text-align: right;">148</p> <p>1 A Well, again, I would point to what my</p> <p>2 opinions are. And you asked me the</p> <p>3 question would it be helpful or not to</p> <p>4 analyze whether or not there was market</p> <p>5 timing. None of my opinions relate to</p> <p>6 in this instance whether or not there</p> <p>7 was market timing. So it was not</p> <p>8 useful to me in coming to my opinions</p> <p>9 in this case.</p> <p>10 Q So, in other words, documentary e-mails</p> <p>11 or other documents produced in this</p> <p>12 case that talk about the arrangements</p> <p>13 with timers, you don't believe those</p> <p>14 documents would have been helpful to</p> <p>15 you to prepare your report?</p> <p>16 A Well, I would say again, I always ask</p> <p>17 for what I need to come to my opinions.</p> <p>18 And my opinions in this case are about</p> <p>19 the SEC's guidance on market timing,</p> <p>20 whether market timing was industry-wide</p> <p>21 or not, was an industry-wide occurrence</p> <p>22 or not; the nature of Columbia</p> <p>23 prospectuses; the role of portfolio</p> <p>24 manager; and the role or the importance</p>

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<p style="text-align: right;">149</p> <p>1 of accurate pricing of funds shares.</p> <p>2 For those opinions I did not feel I</p> <p>3 needed the e-mails you refer to.</p> <p>4 <b>Q So then the simpler way of saying it is</b></p> <p>5 <b>you didn't think it would have been</b></p> <p>6 <b>helpful to you to review e-mails or</b></p> <p>7 <b>other documents discussing the timing</b></p> <p>8 <b>arrangements; is that correct?</b></p> <p>9 <b>A I would say that I got what I needed</b></p> <p>10 <b>for my opinions and that I didn't feel</b></p> <p>11 <b>that I needed the e-mails you're</b></p> <p>12 <b>referring to for these opinions on</b></p> <p>13 <b>Section III of my report.</b></p> <p>14 <b>Q With respect to the transcripts that</b></p> <p>15 <b>we've been looking at back on</b></p> <p>16 <b>Exhibit 2, I notice you don't list</b></p> <p>17 <b>depositions of either Hussey or Tambone</b></p> <p>18 <b>on here.</b></p> <p>19 <b>Is there a reason you</b></p> <p>20 <b>didn't request the deposition</b></p> <p>21 <b>transcripts of Hussey or Tambone? And,</b></p> <p>22 <b>when I say deposition, I mean that as</b></p> <p>23 <b>opposed to investigative testimony.</b></p> <p>24 <b>Do you understand the</b></p>	<p style="text-align: right;">151</p> <p>1 <b>happened?</b></p> <p>2 <b>A I guess until you brought that up I</b></p> <p>3 <b>didn't appreciate that what I cite here</b></p> <p>4 <b>as testimony, which you've called</b></p> <p>5 <b>investigative testimony, was different</b></p> <p>6 <b>than what you're telling me is a</b></p> <p>7 <b>deposition. I did not understand that</b></p> <p>8 <b>distinction.</b></p> <p>9 <b>Q So, for example, you don't know that in</b></p> <p>10 <b>the year 2011 the SEC also took a</b></p> <p>11 <b>deposition of Hussey and Tambone?</b></p> <p>12 <b>A I don't think I knew that. No.</b></p> <p>13 <b>Q Do you think it would be helpful for</b></p> <p>14 <b>you to read those transcripts?</b></p> <p>15 <b>A Well, whether or not it would be</b></p> <p>16 <b>helpful, I'll go back and look again,</b></p> <p>17 <b>point to the opinions that I have. I</b></p> <p>18 <b>believe that with respect to the</b></p> <p>19 <b>opinions I have they reflect the way I</b></p> <p>20 <b>think about the issues that my opinions</b></p> <p>21 <b>are about. So I can't tell you whether</b></p> <p>22 <b>something I haven't read is useful or</b></p> <p>23 <b>not. I just -- I can't tell you.</b></p> <p>24 <b>Q Okay. Well, understanding that</b></p>
<p style="text-align: right;">150</p> <p>1 <b>difference?</b></p> <p>2 <b>A No. I don't understand the difference.</b></p> <p>3 <b>Q Let me -- for purposes of what I'm</b></p> <p>4 <b>asking you, do you understand that,</b></p> <p>5 <b>when the SEC enforcement division</b></p> <p>6 <b>conducts an investigation and we</b></p> <p>7 <b>question people on the record, that</b></p> <p>8 <b>transcript is something we refer to as</b></p> <p>9 <b>investigative testimony.</b></p> <p>10 <b>Does that make sense?</b></p> <p>11 <b>A I didn't know that until you told me,</b></p> <p>12 <b>but I accept it.</b></p> <p>13 <b>Q And, when you look at the Tambone and</b></p> <p>14 <b>Hussey transcripts in here, you'll see</b></p> <p>15 <b>that they're in the late '03, early '04</b></p> <p>16 <b>time frame. Do you see that? That's</b></p> <p>17 <b>the date of the transcripts.</b></p> <p>18 <b>A Yes.</b></p> <p>19 <b>Q Do you know, do you have an</b></p> <p>20 <b>understanding, that the SEC also took a</b></p> <p>21 <b>deposition? Like, you're sitting here</b></p> <p>22 <b>today. This is a deposition. We took</b></p> <p>23 <b>a deposition of both Hussey and Tambone</b></p> <p>24 <b>in this case. Do you know that that</b></p>	<p style="text-align: right;">152</p> <p>1 <b>apparently you didn't realize there</b></p> <p>2 <b>were these transcripts out there until</b></p> <p>3 <b>I told you a minute ago, do you want to</b></p> <p>4 <b>go and read them now that you know?</b></p> <p>5 <b>A Well, I guess I would try and answer</b></p> <p>6 <b>that question in light of what my</b></p> <p>7 <b>opinions are. So I'm -- let me just</b></p> <p>8 <b>look at my opinions and see if -- give</b></p> <p>9 <b>some thought to your question.</b></p> <p>10 <b>So, as a general matter, it</b></p> <p>11 <b>does not -- I would not say, yes, I</b></p> <p>12 <b>immediately need to see those. That's</b></p> <p>13 <b>not my reaction to you telling me that</b></p> <p>14 <b>these were there. That's not how I</b></p> <p>15 <b>would look at that. The only caveat I</b></p> <p>16 <b>would have, the only point I would --</b></p> <p>17 <b>to answer your question is the last</b></p> <p>18 <b>sentence on Page 3 where I say, a</b></p> <p>19 <b>distributor employee would not</b></p> <p>20 <b>typically have access to this</b></p> <p>21 <b>information and I've seen no evidence</b></p> <p>22 <b>to indicate that Columbia's</b></p> <p>23 <b>distribution entity was provided daily</b></p> <p>24 <b>cash balance or cash flow information.</b></p>

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<p style="text-align: right;">153</p> <p>1                   So that -- to answer your</p> <p>2           question, if that informed that point,</p> <p>3           then I would be interested in seeing</p> <p>4           it. For the remaining points, as I sit</p> <p>5           here now, I can't think of a reason to</p> <p>6           see it.</p> <p>7       <b>Q</b>   Okay. So, other than the last point</p> <p>8           that you cite on Page 3 of your report,</p> <p>9           you don't believe that it would be</p> <p>10          helpful for you to read the deposition</p> <p>11          transcript of either defendant in this</p> <p>12          case?</p> <p>13       <b>A</b>   I would say that it would not inform</p> <p>14          the opinions that I offer in this case</p> <p>15          as I have them offered on my report.</p> <p>16       <b>Q</b>   Well, given everything you've learned</p> <p>17          just now, do you plan on asking counsel</p> <p>18          after we get out of here if you can</p> <p>19          read Tambone or Hussey's deposition</p> <p>20          transcript?</p> <p>21               MR. GOLD: Objection.</p> <p>22       <b>A</b>   I don't know. I haven't considered it.</p> <p>23       <b>Q</b>   I think I asked you earlier about</p> <p>24          speaking with people at Columbia at the</p>	<p style="text-align: right;">155</p> <p>1           After the transcripts you identify the</p> <p>2           Complaint, and then the next document</p> <p>3           you identify is the SEC's Supplemental</p> <p>4           Responses to Interrogatories Propounded</p> <p>5           by James Tambone.</p> <p>6               Do you see that? So this</p> <p>7           would be after the transcripts.</p> <p>8       <b>A</b>   Right. So I'm looking --</p> <p>9       <b>Q</b>   The last item is the SEC's supplemental</p> <p>10          responses?</p> <p>11       <b>A</b>   Yes.</p> <p>12       <b>Q</b>   Okay. Why did you review that</p> <p>13          document?</p> <p>14       <b>A</b>   It was sent to me, and I read it. I</p> <p>15          will occasionally read things just to</p> <p>16          read them in the same sense that I -- I</p> <p>17          think -- remember I told you that some</p> <p>18          legal documents were sent to me in</p> <p>19          between meetings? I think this was one</p> <p>20          of them.</p> <p>21       <b>Q</b>   Well, did you request this document or</p> <p>22          just was it sent to you?</p> <p>23       <b>A</b>   I -- I believe and I'm -- I can't</p> <p>24          recall so I'm going to give you my best</p>
<p style="text-align: right;">154</p> <p>1           time of the activity. I'm not sure if</p> <p>2           I asked about the market timers</p> <p>3           themselves.</p> <p>4               But have you at any point</p> <p>5           in time ever spoken to any of the</p> <p>6           entities or people associated with the</p> <p>7           eight market timers that are identified</p> <p>8           in the Complaint?</p> <p>9       <b>A</b>   No.</p> <p>10       <b>Q</b>   Did you ever consider doing so?</p> <p>11       <b>A</b>   In this matter?</p> <p>12       <b>Q</b>   Yes.</p> <p>13       <b>A</b>   No.</p> <p>14       <b>Q</b>   Why not?</p> <p>15       <b>A</b>   Well, in coming to my opinions I don't</p> <p>16          think the opinion -- I need a</p> <p>17          conversation with the eight market</p> <p>18          timers, alleged market timers, in this</p> <p>19          case to come to my opinions in this</p> <p>20          case.</p> <p>21       <b>Q</b>   I turn you back to that Exhibit 2</p> <p>22          again. I know we're flipping around a</p> <p>23          lot. I have another question I'd like</p> <p>24          to ask you on Page 2 of Exhibit 2.</p>	<p style="text-align: right;">156</p> <p>1           recollection, but it's fuzzy because I</p> <p>2           don't have a log of -- I don't know</p> <p>3           right here as I sit here when each</p> <p>4           document arrived.</p> <p>5               As I sit here now my best</p> <p>6           recollection is that it just arrived to</p> <p>7           me before I was retained on the matter</p> <p>8           and that I read it as part of coming --</p> <p>9           because the attorney sent it to me. I</p> <p>10          was not yet retained, and they may have</p> <p>11          asked me to take a look at that</p> <p>12          document.</p> <p>13       <b>Q</b>   Did they direct you to a portion of the</p> <p>14          document or just say, here, read the</p> <p>15          document?</p> <p>16       <b>A</b>   I don't recall. I note that the date</p> <p>17          is July 1, 2001. So that may help me</p> <p>18          frame some of these.</p> <p>19       <b>Q</b>   2011 just so you --</p> <p>20       <b>A</b>   Oh, sorry. Sorry. Sorry. 2011. That</p> <p>21          might help me -- that might help me</p> <p>22          with the timing on some of our earlier</p> <p>23          things.</p> <p>24               I think it was just sent to</p>

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<p style="text-align: right;">157</p> <p>1 me to provide information, if this is</p> <p>2 in fact that document. And, if it is</p> <p>3 the document that was sent to me, I</p> <p>4 don't recall being pointed to any</p> <p>5 specific area. But, again, I can't as</p> <p>6 I sit here now tell you which document</p> <p>7 was provided when.</p> <p>8 <b>Q</b> Okay. Well, do you recall when you</p> <p>9 reviewed the SEC's responses to</p> <p>10 Tambone's interrogatories -- I think I</p> <p>11 just got tongue-tied. Let me start</p> <p>12 over.</p> <p>13 Do you recall, when you</p> <p>14 reviewed the SEC's responses to</p> <p>15 Tambone's interrogatories reviewing any</p> <p>16 information about the SEC's basis for</p> <p>17 alleging that Tambone reviewed and</p> <p>18 provided input into market timing</p> <p>19 language in the prospectuses at</p> <p>20 Columbia?</p> <p>21 <b>MR. GOLD:</b> Objection.</p> <p>22 <b>A</b> Can you -- so, when I reviewed this</p> <p>23 document here that's at the bottom, the</p> <p>24 one that we've been talking about that</p>	<p style="text-align: right;">159</p> <p>1 do you recall reviewing materials about</p> <p>2 the SEC's basis for alleging that</p> <p>3 Tambone was aware of the harm caused by</p> <p>4 market timing?</p> <p>5 <b>A</b> I don't recall that.</p> <p>6 <b>Q</b> Would that be helpful for you to</p> <p>7 review?</p> <p>8 <b>A</b> Well, again, I apologize for always</p> <p>9 answering the same way, but I'm looking</p> <p>10 at the opinions that I offer. And</p> <p>11 you're asking me if Mr. Tambone --</p> <p>12 Mr. Tambone I think you said understood</p> <p>13 the harm that would result from?</p> <p>14 <b>Q</b> Slightly different. Just so that it's</p> <p>15 clear, what I'm asking is if it would</p> <p>16 be helpful for you to review the</p> <p>17 information that the SEC gave to the</p> <p>18 defendants establishing the SEC's basis</p> <p>19 for alleging that Tambone was aware of</p> <p>20 the harm caused by the market timing?</p> <p>21 <b>MS. HAYES:</b> Objection.</p> <p>22 <b>A</b> With respect to the opinions I offer in</p> <p>23 this matter that doesn't bear on the</p> <p>24 opinions that I offer in this matter.</p>
<p style="text-align: right;">158</p> <p>1 says Supplemental Responses to</p> <p>2 Interrogatories Proposed by James</p> <p>3 Tambone -- Propounded by James Tambone,</p> <p>4 when I reviewed that --</p> <p>5 <b>Q</b> Do you recall reviewing information in</p> <p>6 this document, in that document,</p> <p>7 regarding the SEC's basis for alleging</p> <p>8 that Tambone reviewed and provided</p> <p>9 input into the market timing language</p> <p>10 in the Columbia prospectuses?</p> <p>11 <b>A</b> No.</p> <p>12 <b>MR. GOLD:</b> Objection.</p> <p>13 <b>A</b> No. I don't.</p> <p>14 <b>Q</b> Would it be helpful for you to review</p> <p>15 that type of information, the SEC's</p> <p>16 basis for its allegations?</p> <p>17 <b>A</b> I think I would, again, come back to my</p> <p>18 opinions. And my opinions as listed in</p> <p>19 Section III of my report would not seem</p> <p>20 to me to rely or need that information</p> <p>21 to come to the five opinions that are</p> <p>22 laid out in my report.</p> <p>23 <b>Q</b> Let me ask you this. In the SEC's</p> <p>24 responses to Tambone's interrogatories</p>	<p style="text-align: right;">160</p> <p>1 <b>Q</b> So it wouldn't be helpful for you to</p> <p>2 review it, that's the answer; correct?</p> <p>3 <b>A</b> It wouldn't inform the opinions that I</p> <p>4 offer in this matter.</p> <p>5 <b>Q</b> And, again, going back to the SEC's</p> <p>6 responses to the interrogatories in the</p> <p>7 document you cite, would it be helpful</p> <p>8 for you at all to review the materials</p> <p>9 regarding the SEC's basis for alleging</p> <p>10 that Tambone entered into or approved</p> <p>11 arrangements with market timers?</p> <p>12 <b>MS. HAYES:</b> Objection.</p> <p>13 <b>A</b> Again, given the opinions that I offer</p> <p>14 in Section III of my report, the SEC's</p> <p>15 basis for what you just said would not</p> <p>16 inform the opinions that I offer in</p> <p>17 Section III. So no.</p> <p>18 <b>Q</b> In other words, it wouldn't be helpful;</p> <p>19 correct?</p> <p>20 <b>A</b> It wouldn't be helpful for the five</p> <p>21 opinions that I offer in Section 3 of</p> <p>22 my report.</p> <p>23 <b>Q</b> Now, the document we've been referring</p> <p>24 to that I've been discussing that the</p>

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<p style="text-align: right;">161</p> <p>1       <b>SEC responded to Tambone's</b>  2       <b>interrogatories, you'll notice that's</b>  3       <b>called The Supplemental Responses, the</b>  4       <b>one that's dated July 1, 2011.</b>  5               <b>Are you aware that the SEC</b>  6       <b>provided initial responses to Tambone's</b>  7       <b>interrogatories?</b>  8       A   Well, given the title supplemental I  9       guess, if I would have thought about  10      it, I could have reasoned that out, but  11      I have not -- so I would have to say,  12      no, I was not aware. Though, looking  13      at the title I guess, if I wanted to  14      know, I could have figured it out.  15      <b>Q   Well, knowing that now, my representing</b>  16      <b>to you there were initial responses,</b>  17      <b>would you be interested in reading the</b>  18      <b>SEC's initial responses to Tambone's</b>  19      <b>interrogatories?</b>  20      A   I think my answers would mirror what I  21      said with respect to the supplemental  22      responses in that although I don't --  23      well, I should say I would need to know  24      what they are. But, if they are</p>	<p style="text-align: right;">163</p> <p>1       know the bases for the SEC's  2       allegations against Mr. Hussey.  3               MR. LONDON: Can we take a  4       break off the record?  5               THE VIDEOGRAPHER: The time  6       is now 12:57, and we're going off the  7       record.  8               (A lunch recess was taken)  9  10              AFTERNOON SESSION  11  12              THE VIDEOGRAPHER: The time  13       is now 1:51. We are recording and back  14       on the record.  15      <b>Q   Professor Sirri, if you'd take your</b>  16      <b>report that we marked as Exhibit 600</b>  17      <b>and turn to that Section III, Summary</b>  18      <b>of Opinions on Page 3 of your report?</b>  19      A   Yes.  20      <b>Q   The first bullet point hash mark that</b>  21      <b>you itemize there is that the SEC</b>  22      <b>provided limited guidance on market</b>  23      <b>timing or stale price arbitrage prior</b>  24      <b>to the fall of 2003.</b></p>
<p style="text-align: right;">162</p> <p>1       similar to what you told me about,  2       which is that they're the bases for the  3       SEC's allegations, then I would say  4       that with respect to the five opinions  5       I offer in Section III of my report I  6       would not need to review the bases for  7       the SEC's allegations to come to the  8       opinions that I cite. No.  9      <b>Q   Would the same be true for the SEC's</b>  10     <b>responses to Hussey's interrogatories?</b>  11              MS. HAYES: Objection.  12      <b>Q   In other words, you've identified</b>  13      <b>responses to Tambone's interrogatories.</b>  14      <b>The other defendant, Hussey, the SEC</b>  15      <b>also responded to Hussey's</b>  16      <b>interrogatories. I'll represent that</b>  17      <b>to you. I can show you the document,</b>  18      <b>if you'd like.</b>  19              My question is, do you  20      think it would be helpful to you to  21      review the SEC's responses to Hussey's  22      interrogatories?  23      A   No. Based on my opinions in Section  24      III of the report I would not need to</p>	<p style="text-align: right;">164</p> <p>1               <b>Why is that item important</b>  2       <b>to you as part of your work in this</b>  3       <b>case?</b>  4      A   There is a -- this case is about market  5      timing, and the term market timing is  6      used. My opinion is relevant and  7      important to me with respect to this  8      case because it talks about and it  9      deals with the point that market timing  10     was both not uniquely defined and  11     guidance that came from the SEC about  12     this ill-defined activity was very  13     limited. And so the opinion points out  14     that, unlike today, we're looking back,  15     people have a sense of what stale price  16     arbitrage is and how it's harmful to  17     people, that was not the case at the  18     time -- at the relevant period for this  19     matter from 1998 to 2003.  20      <b>Q   What about the next item? What about</b>  21      <b>market timing and mutual funds was an</b>  22      <b>industry-wide issue prior to the fall</b>  23      <b>of 2003, why did you opine on that?</b>  24      A   Well, I opine because counsel asked me</p>

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<p style="text-align: right;">165</p> <p>1 an opinion what did I think about</p> <p>2 market timing about in terms of its</p> <p>3 prevalence before 2003, and we know</p> <p>4 that market timing was an industry-wide</p> <p>5 issue. There are a lot of settlements</p> <p>6 that went on, and we know based on the</p> <p>7 GAO report that it was prevalent. That</p> <p>8 is, market timing was pretty broad</p> <p>9 within the industry.</p> <p>10 <b>Q</b> I guess my question really is how is</p> <p>11 that relevant to the Tambone and Hussey</p> <p>12 case?</p> <p>13 <b>A</b> Oh, it's relevant because this matter,</p> <p>14 that is, the activity in this</p> <p>15 particular instance, is not unique. It</p> <p>16 was going on broadly throughout the</p> <p>17 industry.</p> <p>18 <b>Q</b> But there were a lot of fund companies</p> <p>19 and individuals who were charged with</p> <p>20 violating the law back in that time</p> <p>21 frame; correct?</p> <p>22 <b>A</b> There were a lot. That's correct.</p> <p>23 <b>Q</b> The fourth hash mark down you discuss</p> <p>24 the rule of the manager of the fund's</p>	<p style="text-align: right;">167</p> <p>1 balances or the aggregate investor cash</p> <p>2 flows.</p> <p>3 <b>Q</b> And my question I think -- well, when I</p> <p>4 hone in on it for you, you talk about</p> <p>5 the daily cash balances and the</p> <p>6 aggregate cash flow as a matter of</p> <p>7 trying to determine whether something</p> <p>8 is disruptive or harmful to the fund;</p> <p>9 right? I mean, you're using the cash</p> <p>10 flow and the cash balances to determine</p> <p>11 if there's harm to the fund; is that</p> <p>12 correct?</p> <p>13 <b>A</b> What it says is that knowledge of the</p> <p>14 cash flow and knowledge of day-to-day</p> <p>15 cash balances are pieces of information</p> <p>16 that allow the portfolio manager to</p> <p>17 determine if particular trading</p> <p>18 activity is harmful to the fund.</p> <p>19 <b>Q</b> And in that next sentence you say, the</p> <p>20 distributor employee would not</p> <p>21 typically have access to that</p> <p>22 information.</p> <p>23 Now, my question is in our</p> <p>24 case here, in the Columbia case, isn't</p>
<p style="text-align: right;">166</p> <p>1 investments. You talk about the</p> <p>2 portfolio manager. And I'd like to</p> <p>3 direct you to the fourth line down, the</p> <p>4 sentence that discusses -- the end of</p> <p>5 it says, disruptive or harmful to the</p> <p>6 fund. And then it says, a distributor</p> <p>7 employee would not typically have</p> <p>8 access to this information.</p> <p>9 Do you see that --</p> <p>10 <b>A</b> I do.</p> <p>11 <b>Q</b> -- section?</p> <p>12 Okay. Now, what</p> <p>13 information are you saying the</p> <p>14 distributor employee would not</p> <p>15 typically have access to?</p> <p>16 <b>A</b> So, if you look at the beginning of</p> <p>17 this hash mark paragraph, I say that</p> <p>18 the portfolio manager and the advisor</p> <p>19 have knowledge of the funds' day-to-day</p> <p>20 cash balances and aggregate investor</p> <p>21 cash flows. So this sentence below</p> <p>22 that follows that, the distributor</p> <p>23 employee would not typically have</p> <p>24 access to the fund's day-to-day cash</p>	<p style="text-align: right;">168</p> <p>1 it correct that the distributor</p> <p>2 employees did learn that there were</p> <p>3 harm to the funds in the market timing</p> <p>4 trades?</p> <p>5 MS. HAYES: Objection.</p> <p>6 MR. GOLD: Objection.</p> <p>7 <b>A</b> In this case I don't know what people</p> <p>8 learned or didn't know so I don't have</p> <p>9 an opinion about that nor do I know</p> <p>10 what they knew so I can't respond to</p> <p>11 that.</p> <p>12 <b>Q</b> And the reason you don't know is you</p> <p>13 didn't review any e-mails where Tambone</p> <p>14 or Hussey were informed of harm to</p> <p>15 funds; correct?</p> <p>16 MS. HAYES: Objection.</p> <p>17 <b>A</b> The reason I don't know is my opinions</p> <p>18 don't cover that.</p> <p>19 <b>Q</b> But you also told me that you didn't</p> <p>20 review e-mails that discussed, for</p> <p>21 example, communications to Tambone that</p> <p>22 there were harm to the Columbia funds</p> <p>23 from market timing; correct?</p> <p>24 <b>A</b> Well, I don't know what the e-mails</p>

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<p style="text-align: right;">169</p> <p>1 you're talking about said so I haven't</p> <p>2 reviewed e-mails so I can't tell you --</p> <p>3 I can't answer your question the way</p> <p>4 it's posed precisely, but I reviewed</p> <p>5 materials I needed to come to the</p> <p>6 opinions I came to.</p> <p>7 <b>Q</b> Okay. But, would it matter to you if</p> <p>8 you knew that there were e-mails that</p> <p>9 showed that Tambone learned that there</p> <p>10 were harm to the Columbia funds from</p> <p>11 market timing?</p> <p>12 <b>MR. GOLD:</b> Objection.</p> <p>13 <b>A</b> So I have not reviewed the record, and</p> <p>14 I did not need to review the part of</p> <p>15 the record you're asking about to come</p> <p>16 to my opinion. I know there's a lot of</p> <p>17 material in the record. I would have</p> <p>18 to review all of that, if I were to</p> <p>19 come to some opinions about that, and I</p> <p>20 haven't come to such opinions.</p> <p>21 <b>Q</b> So the bottom line is the fact that</p> <p>22 there are e-mails produced in this</p> <p>23 case, e-mails that show that Tambone</p> <p>24 was made aware that there were harm to</p>	<p style="text-align: right;">171</p> <p>1 e-mails to come to my opinions.</p> <p>2 <b>Q</b> The next page, Page 4 of your report,</p> <p>3 there's a hash mark where you discuss</p> <p>4 the concept that daily fair value</p> <p>5 pricing was the only method that would</p> <p>6 eliminate both the incentives for and</p> <p>7 the harmful effects of stale price</p> <p>8 arbitrage trading.</p> <p>9 Can you explain to me why</p> <p>10 daily fair value pricing was the only</p> <p>11 method? In other words, there's other</p> <p>12 potential methods. There's redemption</p> <p>13 fees. There's sales loads. Why do</p> <p>14 those items, redemption fees, sales</p> <p>15 loads, why don't they help to eliminate</p> <p>16 incentives for the harmful effects of</p> <p>17 arbitrage trading?</p> <p>18 <b>MR. GOLD:</b> Objection.</p> <p>19 <b>A</b> So what I say in this is that daily</p> <p>20 fair value pricing is the only method</p> <p>21 that would eliminate both the</p> <p>22 incentives for and harmful effects of</p> <p>23 stale price arbitrage. In the example</p> <p>24 that you gave you asked about</p>
<p style="text-align: right;">170</p> <p>1 the Columbia funds, that's not</p> <p>2 something that you think it was</p> <p>3 necessary to look at as part of your</p> <p>4 work?</p> <p>5 <b>MR. GOLD:</b> Objection.</p> <p>6 <b>Q</b> Am I correct?</p> <p>7 <b>A</b> I don't know what the e-mails show. I</p> <p>8 don't know if they show what you</p> <p>9 asserted they show or not. What I said</p> <p>10 and what I'll say again is that I</p> <p>11 reviewed the kind of materials I needed</p> <p>12 to come to the opinions in my case. In</p> <p>13 my report. Excuse me.</p> <p>14 <b>Q</b> And the reason you don't know what the</p> <p>15 e-mails said is because the only</p> <p>16 e-mails or documents that you looked at</p> <p>17 were the ones identified in Exhibit 2</p> <p>18 to your report; correct?</p> <p>19 <b>MS. HAYES:</b> Objection.</p> <p>20 Misstates his testimony.</p> <p>21 <b>A</b> The reason why I don't know what they</p> <p>22 say is that I reviewed whatever</p> <p>23 material I needed for my opinions, and</p> <p>24 I didn't feel I needed to review</p>	<p style="text-align: right;">172</p> <p>1 redemption fees. A redemption fee,</p> <p>2 depending on how it's structured, may</p> <p>3 not help at all.</p> <p>4 An example would be the</p> <p>5 redemption fee is 1 percent and on a</p> <p>6 particular day the stale price</p> <p>7 arbitrage yields a profit of 3 percent,</p> <p>8 thus there's still an incentive to</p> <p>9 engage in stale price arbitrage. It</p> <p>10 may attenuate the amount of profit, if</p> <p>11 any, that the stale price arbitrage</p> <p>12 trader takes, but it wouldn't help that</p> <p>13 person from engaging in stale price</p> <p>14 arbitrage. They would still have an</p> <p>15 incentive to do so.</p> <p>16 The second point is that</p> <p>17 stale price arbitrage trading can exist</p> <p>18 even without a round trip. If all I do</p> <p>19 ever is buy mutual funds, take the</p> <p>20 example of me being someone who saves</p> <p>21 money every month. Hypothetically, I</p> <p>22 save a thousand dollars a month and</p> <p>23 that thousand dollars is available to</p> <p>24 me on the first of the month. I could</p>

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<p style="text-align: right;">177</p> <p>1 <b>Q Who have you talked to?</b></p> <p>2 <b>A</b> I have talked to academics who've</p> <p>3 gained -- who've done it. Just</p> <p>4 professors who understood this and</p> <p>5 figured it out. I've talked to</p> <p>6 individuals who've done it who weren't</p> <p>7 academics who were professionals in the</p> <p>8 financial services community. Those</p> <p>9 are the two that come to mind at the</p> <p>10 moment.</p> <p>11 <b>Q But in this case you didn't talk to any</b></p> <p>12 <b>of the timers that are identified in</b></p> <p>13 <b>the Complaint?</b></p> <p>14 <b>A</b> I did not.</p> <p>15 <b>Q The folks that you did speak to who</b></p> <p>16 <b>have engaged in market timing, did you</b></p> <p>17 <b>discussed with them the concept of what</b></p> <p>18 <b>would eliminate their incentives?</b></p> <p>19 <b>A</b> Implicitly, yes. With the academics.</p> <p>20 <b>Q And with the nonacademics?</b></p> <p>21 <b>A</b> I don't recall that I did. I can't</p> <p>22 recall it coming up with the</p> <p>23 nonacademics. With the academic folks</p> <p>24 it was somewhat of an academic</p>	<p style="text-align: right;">179</p> <p>1 particular individual engaged in market</p> <p>2 timing or not under a definition that I</p> <p>3 developed. In this case that was not</p> <p>4 part of my assignment.</p> <p>5 <b>Q So your assignment was limited to the</b></p> <p>6 <b>specific items that appear on pages 2</b></p> <p>7 <b>to 3 of your report or I guess 2 to 4</b></p> <p>8 <b>of your report; is that correct?</b></p> <p>9 <b>A</b> Section II describes my assignment, and</p> <p>10 Section III describes my opinions.</p> <p>11 <b>Q So you didn't do any work in this case</b></p> <p>12 <b>that falls outside of either what is in</b></p> <p>13 <b>the assignment or the opinions section</b></p> <p>14 <b>of your report; correct?</b></p> <p>15 <b>A</b> That's correct.</p> <p>16 <b>Q Could you turn to Page 9 of your</b></p> <p>17 <b>report, please. Paragraph 22. The</b></p> <p>18 <b>second sentence in your Paragraph 22</b></p> <p>19 <b>says that identifying whether an</b></p> <p>20 <b>investor is engaged in stale price</b></p> <p>21 <b>arbitrage requires empirical analysis</b></p> <p>22 <b>and absent confirmation from the</b></p> <p>23 <b>investor must be statistically inferred</b></p> <p>24 <b>from the investor's purchase and sale</b></p>
<p style="text-align: right;">178</p> <p>1 conversation about why the opportunity</p> <p>2 arises and how it can be fixed.</p> <p>3 <b>Q With respect to nonacademics, how did</b></p> <p>4 <b>it come about that you spoke to those</b></p> <p>5 <b>people?</b></p> <p>6 <b>A</b> In a matter. I was engaged in there were</p> <p>7 allegations that -- so this is an</p> <p>8 example of it. There were allegations</p> <p>9 that employees of a fund complex</p> <p>10 engaged in market timing of their own</p> <p>11 mutual funds, and in the process of the</p> <p>12 work I did there I talked to</p> <p>13 individuals who were being questioned</p> <p>14 about their trading activity. And I</p> <p>15 later determined that their trading</p> <p>16 activity was consistent with market</p> <p>17 timing.</p> <p>18 <b>Q Well, in that situation you talked to</b></p> <p>19 <b>individuals, but in our situation you</b></p> <p>20 <b>didn't talk to individuals.</b></p> <p>21 <b>Why not?</b></p> <p>22 <b>MS. HAYES: Objection.</b></p> <p>23 <b>A</b> In the case that I'm referring to I was</p> <p>24 retained in part to determine if a</p>	<p style="text-align: right;">180</p> <p>1 activity.</p> <p>2 <b>Now, my question to you is,</b></p> <p>3 <b>in this case here, the Tambone and</b></p> <p>4 <b>Hussey case, wouldn't it be important</b></p> <p>5 <b>to you to review materials that could</b></p> <p>6 <b>potentially show confirmation from the</b></p> <p>7 <b>investor that they're engaging in that</b></p> <p>8 <b>activity?</b></p> <p>9 <b>MR. GOLD: Objection.</b></p> <p>10 <b>A</b> In the opinions I offer on this case,</p> <p>11 which are in Section III of my report,</p> <p>12 a review of investor's trading records</p> <p>13 is not needed for me to come to the</p> <p>14 opinions that I offer in this matter.</p> <p>15 <b>Q I'm not actually talking about trading</b></p> <p>16 <b>records, per se. I'm talking about</b></p> <p>17 <b>even talking to one of the investors,</b></p> <p>18 <b>one of the eight investors in the</b></p> <p>19 <b>Complaint.</b></p> <p>20 <b>A</b> I would -- again, as I look at the</p> <p>21 opinions I offer in this report,</p> <p>22 conversing with one of the eight</p> <p>23 investors I don't feel is necessary in</p> <p>24 coming to the opinions I come to in</p>

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<p style="text-align: right;">181</p> <p>1 this report.</p> <p>2 <b>Q So the investor's own words would not</b></p> <p>3 <b>be important to you as part of your</b></p> <p>4 <b>work in this case?</b></p> <p>5 MS. HAYES: Objection.</p> <p>6 Asked and answered.</p> <p>7 A It would not -- I would not require a</p> <p>8 conversation with one of the eight</p> <p>9 investors to come to the opinions that</p> <p>10 I offer in this report.</p> <p>11 <b>Q I'm going to have you turn to Paragraph</b></p> <p>12 <b>31. That's on Page 15 of your report.</b></p> <p>13 <b>I'd like to focus on the last sentence</b></p> <p>14 <b>of Paragraph 31. The paragraph -- I'm</b></p> <p>15 <b>sorry, the sentence that says,</b></p> <p>16 <b>notwithstanding the limitations of the</b></p> <p>17 <b>portfolio manager to fully understand</b></p> <p>18 <b>the trading by individual accounts, the</b></p> <p>19 <b>portfolio managers were in a better</b></p> <p>20 <b>position than the distributor to</b></p> <p>21 <b>identify when an overall pattern of</b></p> <p>22 <b>short term or excessive trading was</b></p> <p>23 <b>occurring within their funds and to</b></p> <p>24 <b>determine whether such large or</b></p>	<p style="text-align: right;">183</p> <p>1 responsibility and knowledge.</p> <p>2 <b>Q And I understand that. But</b></p> <p>3 <b>specifically in the sentence in</b></p> <p>4 <b>Paragraph 31 you say that the portfolio</b></p> <p>5 <b>managers were in a better position than</b></p> <p>6 <b>the distributor.</b></p> <p>7 MS. HAYES: Objection.</p> <p>8 <b>Q I want to focus on the better position</b></p> <p>9 <b>aspect.</b></p> <p>10 A Sure. You know what, let me just find</p> <p>11 it.</p> <p>12 <b>Q Sure.</b></p> <p>13 A Yeah, I found it. Let me just...</p> <p>14 Okay.</p> <p>15 <b>Q So focusing on that aspect of portfolio</b></p> <p>16 <b>managers in a better position than the</b></p> <p>17 <b>distributor, my question to you is, in</b></p> <p>18 <b>our case here, in the Columbia case, do</b></p> <p>19 <b>you have an understanding that the</b></p> <p>20 <b>distributors were informed of the harm</b></p> <p>21 <b>to the funds from the market timing?</b></p> <p>22 MS. HAYES: Objection.</p> <p>23 A I don't know the facts about who was</p> <p>24 informed about what in any level of</p>
<p style="text-align: right;">182</p> <p>1 correlated small trading was harmful or</p> <p>2 disruptive.</p> <p>3 Now in that sentence are</p> <p>4 you speaking generally or are you also</p> <p>5 speaking with respect to the portfolio</p> <p>6 managers in the Columbia situation?</p> <p>7 A In this... in this paragraph I'm making</p> <p>8 a general statement. I'm saying that a</p> <p>9 portfolio manager has responsibilities,</p> <p>10 access to information, and professional</p> <p>11 skills in making a particular judgment.</p> <p>12 <b>Q Now, in the Columbia case does it</b></p> <p>13 <b>matter to you whether or not the</b></p> <p>14 <b>distributor people were actually</b></p> <p>15 <b>informed of timing arrangements?</b></p> <p>16 A Well, I think you have to look at my</p> <p>17 opinion. And with respect to my</p> <p>18 opinion I'm pointing out that it's the</p> <p>19 portfolio manager who's in a position</p> <p>20 to judge whether particular timing</p> <p>21 activity -- excuse me, or the</p> <p>22 particular trading activity investor</p> <p>23 flows are disruptive to the fund in</p> <p>24 light of the portfolio manager's</p>	<p style="text-align: right;">184</p> <p>1 detail. What I say here is that the</p> <p>2 portfolio manager was in a better</p> <p>3 position to identify -- than the</p> <p>4 distributor to identify whether an</p> <p>5 overall pattern of short-term excessive</p> <p>6 trading was occurring and to determine</p> <p>7 whether such large or correlated small</p> <p>8 trading was harmful or disruptive.</p> <p>9 So the statement that I</p> <p>10 make here talks about identifying the</p> <p>11 trading, short-term and excessive, and</p> <p>12 determining whether that trading was</p> <p>13 harmful or disruptive. And I'm saying</p> <p>14 that in coming to that determination</p> <p>15 about whether the trading was harmful</p> <p>16 or disruptive portfolio managers are in</p> <p>17 better positions than distributors to</p> <p>18 make that judgment.</p> <p>19 <b>Q So it doesn't matter to you whether or</b></p> <p>20 <b>not there's e-mails that show portfolio</b></p> <p>21 <b>managers communicating to distributors</b></p> <p>22 <b>that there's harm to the funds --</b></p> <p>23 MR. GOLD: Objection.</p> <p>24 <b>Q -- to Columbia?</b></p>

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<p style="text-align: right;">185</p> <p>1 MS. HAYES: Asked and</p> <p>2 answered.</p> <p>3 A I think I've -- we've addressed that,</p> <p>4 but what I would say is that I have</p> <p>5 not -- this is a statement I'm making</p> <p>6 about who's in a position to make the</p> <p>7 judgment.</p> <p>8 Q So do you have any interest at all</p> <p>9 having listened to my questions to you</p> <p>10 today to review any of the e-mails in</p> <p>11 this case that discuss portfolio</p> <p>12 managers communicating to distributors</p> <p>13 that there's harm in the funds?</p> <p>14 A I would say that -- I'm not sure about</p> <p>15 the phrase interest, but what I would</p> <p>16 say is I always want to have the best</p> <p>17 information I can have to come to my</p> <p>18 opinions. And I think I have the</p> <p>19 information I need to come to the</p> <p>20 opinions I offer.</p> <p>21 Q So even if I were to show you an e-mail</p> <p>22 from a portfolio manager to a</p> <p>23 distributor in Columbia, that wouldn't</p> <p>24 change your opinion?</p>	<p style="text-align: right;">187</p> <p>1 Paragraph 33 on Page 16. The paragraph</p> <p>2 that begins, my understanding from</p> <p>3 counsel.</p> <p>4 What counsel are you</p> <p>5 referring to?</p> <p>6 A Counsel would include attorneys who</p> <p>7 work for Skadden, Arps and Greenberg</p> <p>8 Traurig.</p> <p>9 Q So with respect to what you identify</p> <p>10 here in Paragraph 33, what did counsel</p> <p>11 tell you? You refer to your</p> <p>12 understanding from counsel.</p> <p>13 A Just what the sentence says. I had</p> <p>14 asked the question whether the actual</p> <p>15 trading strategies of the people who</p> <p>16 had these alleged arrangements, whether</p> <p>17 those actual strategies were disclosed</p> <p>18 to the defendants. I asked that</p> <p>19 question. And counsel told me they</p> <p>20 were not.</p> <p>21 Q Well, did you ask counsel to show you</p> <p>22 the documents supporting what counsel</p> <p>23 told you?</p> <p>24 MS. HAYES: Objection.</p>
<p style="text-align: right;">186</p> <p>1 A I can't -- It's hard for me to answer a</p> <p>2 question about whether something I</p> <p>3 haven't seen, it sounds like you're</p> <p>4 citing something specific, would change</p> <p>5 my opinion when I'm not sure what</p> <p>6 opinion you're referring to when you</p> <p>7 say my opinion.</p> <p>8 Q Well, you've obviously spent a lot of</p> <p>9 time discussing this and I've</p> <p>10 questioned you a lot about this, what</p> <p>11 you reviewed as part of your work in</p> <p>12 this case. And I just want to know if</p> <p>13 there's any reason why you wouldn't</p> <p>14 want to see e-mails from the portfolio</p> <p>15 managers to the distributor in</p> <p>16 Columbia.</p> <p>17 A And I think the reason that I don't</p> <p>18 feel the need to see such e-mail is</p> <p>19 that the opinions that I offer in this</p> <p>20 matter are such that I feel like I have</p> <p>21 all the information I need to come to</p> <p>22 those opinions without reviewing the</p> <p>23 e-mail you're discussing.</p> <p>24 Q Go to the next page in your report.</p>	<p style="text-align: right;">188</p> <p>1 A I did not.</p> <p>2 Q Did you ask counsel to show you any</p> <p>3 documents which discussed the trading</p> <p>4 strategies of the market timers?</p> <p>5 A I did not.</p> <p>6 Q The other part of your sentence you say</p> <p>7 that -- I think, if I'm correct,</p> <p>8 counsel told you that the frequency of</p> <p>9 trading activity and approximate dollar</p> <p>10 amount was disclosed to the defendants.</p> <p>11 Am I reading that correct?</p> <p>12 A I think it says that only the</p> <p>13 approximate frequency of trading</p> <p>14 activity and the approximate dollar</p> <p>15 amount was disclosed to the defendants.</p> <p>16 Q And counsel told you that?</p> <p>17 A Counsel told me that.</p> <p>18 Q So you didn't ask counsel how they</p> <p>19 understood that, did you?</p> <p>20 MS. HAYES: Objection.</p> <p>21 A I'm -- who is they in your question?</p> <p>22 I'm sorry.</p> <p>23 Q Sure.</p> <p>24 In other words, counsel</p>

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<p style="text-align: right;">201</p> <p>1 market timers, and it talks about it</p> <p>2 connects to short-term and excessive</p> <p>3 trading. So it's about disclosure, but</p> <p>4 it's also about understanding the</p> <p>5 import behind the disclosure.</p> <p>6 <b>Q Let me ask you this. Would you turn to</b></p> <p>7 <b>Paragraph 43 on Page 21 of your report?</b></p> <p>8 <b>This is where you refer to finding no</b></p> <p>9 <b>SEC rule prior to the fall of 2003.</b></p> <p>10 <b>Do you see that section?</b></p> <p>11 <b>A (No response.)</b></p> <p>12 <b>Q Well, what about Rule 10b5? Wouldn't</b></p> <p>13 <b>that be an SEC rule that's applicable</b></p> <p>14 <b>to this situation?</b></p> <p>15 <b>MR. GOLD: Objection.</b></p> <p>16 <b>MS. HAYES: Objection.</b></p> <p>17 <b>Calls for a legal conclusion.</b></p> <p>18 <b>A I don't know that -- when I think about</b></p> <p>19 <b>market timing, short-term trading,</b></p> <p>20 <b>frequent trading, stale price arbitrage</b></p> <p>21 <b>within mutual funds, I was looking for</b></p> <p>22 <b>rules that addressed those practices as</b></p> <p>23 <b>I understand them. You've cited to an</b></p> <p>24 <b>antifraud rules, and I'm not sure I'm</b></p>	<p style="text-align: right;">203</p> <p>1 disclosure violations, just generally</p> <p>2 disclosure violations?</p> <p>3 <b>Q Well, we can relate it to our case</b></p> <p>4 <b>here. Allowing activity to happen as</b></p> <p>5 <b>alleged that goes in violation of the</b></p> <p>6 <b>prospectus disclosure.</b></p> <p>7 <b>MR. GOLD: Objection.</b></p> <p>8 <b>A Well, I would say that based on the</b></p> <p>9 <b>time I spent at the SEC I know that the</b></p> <p>10 <b>Commission uses 10b5, Section 10b and</b></p> <p>11 <b>10b5, when it alleges disclosure</b></p> <p>12 <b>violation issues. Beyond that, I'm not</b></p> <p>13 <b>sure I can talk very precisely about</b></p> <p>14 <b>when they do so and when they don't.</b></p> <p>15 <b>That's -- again, I'm not an attorney,</b></p> <p>16 <b>but I do understand that it's a</b></p> <p>17 <b>frequent tool that's used by the</b></p> <p>18 <b>Commission. Not always, but they do</b></p> <p>19 <b>use it when there are disclosure</b></p> <p>20 <b>violations.</b></p> <p>21 <b>Q Do you contemplate doing any additional</b></p> <p>22 <b>work at this point on the Tambone and</b></p> <p>23 <b>Hussey matter after you leave here</b></p> <p>24 <b>today?</b></p>
<p style="text-align: right;">202</p> <p>1 in a position as a nonlawyer to say or</p> <p>2 to opine on how that rule affects or</p> <p>3 speaks to these practices.</p> <p>4 <b>Q But, I mean, you did work for the SEC</b></p> <p>5 <b>for a few years; correct?</b></p> <p>6 <b>MS. HAYES: Objection.</b></p> <p>7 <b>Q And earlier in today's testimony you</b></p> <p>8 <b>did refer to the antifraud rules way</b></p> <p>9 <b>back earlier today; correct?</b></p> <p>10 <b>MS. HAYES: Objection.</b></p> <p>11 <b>A I did work for the SEC. And I have a</b></p> <p>12 <b>nonlawyer's understanding of why the</b></p> <p>13 <b>antifraud rules are important to the</b></p> <p>14 <b>Commission's policies and programs, but</b></p> <p>15 <b>I think that's different than opining</b></p> <p>16 <b>on how a particular rule in general</b></p> <p>17 <b>plays into activities that are not</b></p> <p>18 <b>precisely defined.</b></p> <p>19 <b>Q Well, do you have a nonlawyer's</b></p> <p>20 <b>understanding or opinion on the</b></p> <p>21 <b>implications of 10b5 as it applies to</b></p> <p>22 <b>disclosure violations?</b></p> <p>23 <b>MR. GOLD: Objection.</b></p> <p>24 <b>A Well, I would -- are you saying</b></p>	<p style="text-align: right;">204</p> <p>1 <b>A At this point I don't contemplate doing</b></p> <p>2 <b>any additional work unless new</b></p> <p>3 <b>materials are brought to me. But, no,</b></p> <p>4 <b>I do not contemplate doing additional</b></p> <p>5 <b>work.</b></p> <p>6 <b>Q So, for example, the materials I've</b></p> <p>7 <b>discussed with you today like the</b></p> <p>8 <b>depositions of Hussey and Tambone, you</b></p> <p>9 <b>don't contemplate going and reading</b></p> <p>10 <b>them after you leave here today?</b></p> <p>11 <b>A At this point I do not contemplate</b></p> <p>12 <b>going and reading them.</b></p> <p>13 <b>Q By way of background and to your</b></p> <p>14 <b>history, do you have any professional</b></p> <p>15 <b>licenses or affiliations?</b></p> <p>16 <b>A Licenses, no. Affiliations, I'm a</b></p> <p>17 <b>member of some academic societies. For</b></p> <p>18 <b>instance, if I subscribe to a journal,</b></p> <p>19 <b>I become a member automatically.</b></p> <p>20 <b>Anybody can become a member. So that's</b></p> <p>21 <b>an affiliation. But beyond that --</b></p> <p>22 <b>Q Do you have -- no professional -- for</b></p> <p>23 <b>example, a law degree would be a</b></p> <p>24 <b>professional license, for example.</b></p>

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